

United States

23

Circuit Court of Appeals

For the Ninth Circuit.

CAMPBELL WILLIAM SKEOCH BRANCH,
an alien,

Appellant,

vs.

EDWARD CAHILL, Commissioner of Immigration
for the Northern District of California at the
Port of San Francisco, California,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Northern District of California,
Southern Division.

FILED

MAY 4 - 1936

PAUL P. O'BRIEN,

CLERK

No. 8160

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Circuit Court of Appeals

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES:

For Appellant:

GEORGE R. ANDERSEN

580 Market Street,
San Francisco, Calif

For Appellee:

UNITED STATES ATTORNEY

San Francisco, Calif

In the Southern Division of the United States
District Court for the Northern District
of California

No. 22142L

In the Matter of the Petition of George R. Ander-
sen, for and on behalf of:

CAMPBELL WILLIAM SKEOCH BRANCH

For a writ of HABEAS CORPUS.

PETITION FOR WRIT.

To the Honorable the Judges of the United States
District Court in and for the Northern District
of California:

Your petitioner, George R. Andersen, for and on
behalf of CAMPBELL WILLIAM SKEOCH
BRANCH, an alien, respectfully shows and pre-
sents to this honorable court the following facts:

I.

That the said alien is at the date hereof unlawfully detained and confined and deprived of his liberty at Angel Island, California, by one Edward Cahill, United States Immigration Commissioner at the port of San Francisco, for the Northern District of California, and by his officers and agents.

II.

That your petitioner alleges that said alien is not imprisoned and deprived of his liberty under any process, judgment, or decree of any competent court or tribunal of civil or criminal jurisdiction.
[1*]

III.

That the true cause or pretense of the restraint and imprisonment of said alien is a certain alleged warrant of deportation in the possession of said Edward Cahill.

IV.

That said warrant depends upon certain proofs submitted to the Department of Labor of the United States and more particularly the Assistant Secretary of Labor who signed and issued said warrant, which said proofs are in the possession of the said Edward Cahill.

V.

That said proofs do not state facts sufficient to constitute a crime against any law or laws of the

*Page numbering appearing at the foot of page of original certified Transcript of Record.

United States and do not state facts sufficient to confer upon the said Department of Labor jurisdiction to issue said warrant or to deport said alien.

VI.

That your petitioner further alleges that for the reasons hereinbefore set forth said detention and imprisonment of the said alien is illegal and without authority or justification in law, and is in violation of the Constitution of the United States of America and the amendments thereto, and contrary to the acts of Congress in such case made and provided, and the said warrant of deportation was wrongfully and unlawfully issued against said alien.

VII.

That no prior application for a writ of habeas corpus has been made to this honorable court in and about the matters herein set forth on behalf of said alien.

VIII.

That the said warrant of deportation charges that the said alien "is a member of or affiliated with an organization, asso- [2] ciation, society, or group that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, written or printed matter advising, advocating, or teaching

the overthrow by force or violence of the government of the United States, or of all forms of law.

IX.

That in the record of the proceedings before the said Immigration Department, and reviewed by the said Assistant Secretary of Labor there is no evidence upon which to sustain the charges contained in the said warrant of deportation; and a copy of the said proceedings before the said Immigration Department are filed herewith, and made a part hereof.

X.

That in the said copy of proceedings before the Immigration Department reference is therein made to many exhibits introduced in evidence by the government and by the alien; that your petitioner is unable to file copies of said exhibits herewith for the reason that the said exhibits are not available to your petitioner, and are in the possession of the said Edward Cahill.

XI.

WHEREFORE, your petitioner prays that a writ of Habeas Corpus issue out of this Honorable Court directed to the said Edward Cahill, on behalf of said alien, and that the said Edward Cahill be ordered and directed to be and appear before this Court to show cause, if any he may have, why the said petition should not be granted; and further, that pending the hearing the alien be admitted to bail.

DATED: October 21, 1935.

GEORGE R. ANDERSEN

Petitioner. [3]

State of California,
City and County of San Francisco.—ss.

GEORGE R. ANDERSEN, being first duly sworn, deposes and says:

That he is the petitioner named in the within and foregoing petition; that he has read the same and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated upon his information or belief, and as to those matters he believes it to be true.

That he makes this verification for and on behalf of said alien, and files this petition for and on behalf of said alien, for the reason that affiant is informed and therefore believes that the said alien is at present confined at Angel Island, and could not therefore with reasonable dispatch appear before a Notary Public.

GEORGE R. ANDERSEN

Subscribed and sworn to before me this 21st day of October, 1935.

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Oct. 21 1935. Walter B. Maling, Clerk. [4]

[Title of Court and Cause.]

ORDER TO SHOW CAUSE

Upon reading and filing the verified petition of George R. Andersen, for and on behalf of CAMPBELL WILLIAM SKEOCH BRANCH, for a writ

of Habeas Corpus, whereby it appears that the said CAMPBELL WILLIAM SKEOCH BRANCH is unlawfully imprisoned and restrained of his liberty by Edward Cahill, Commissioner of Immigration for the Northern District of California, at Angel Island, California, from which it appears that a Writ of Habeas Corpus ought to issue:

IT IS HEREBY ORDERED that Edward Cahill, Immigration Commissioner, do be and appear before this court on the 18th day of November, 1935, at the hour of 10 o'clock A.M. of said day, at the Courtroom of the above entitled court in the postoffice Building, San Francisco, California, then and there to show cause why the said Writ of Habeas Corpus as prayed for should not be granted to the said alien.

IT IS FURTHER ORDERED that a copy of this order, together with a copy of the petition herein be served upon the said Edward Cahill at least 5 days prior to said hearing.

IT IS FURTHER ORDERED that pending the final determination of this petition that the said CAMPBELL WILLIAM SKEOCH BRANCH be admitted to bail in the sum of \$1000.00.

DATED: October 21st, 1935.

HAROLD LOUDERBACK

Judge of the District Court.

[Endorsed]: Filed Oct. 21, 1935. Walter B. Maling, Clerk. [5]

[Title of Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE

Comes now Edward W. Cahill, as District Commissioner of Immigration and Naturalization for the Port of San Francisco, California, through Arthur J. Phelan, as Inspector in Charge, Legal Division of the United States Immigration and Naturalization Service at said port, regularly assigned hereunto by said District Commissioner of Immigration and Naturalization and for cause why a writ of habeas corpus should not issue herein, shows as follows:

I.

That the person in whose behalf the petition for writ of habeas corpus was filed, is detained by your respondent Edward W. Cahill, as District Commissioner of Immigration and Naturalization for the Port of San Francisco, California, [6] under and by virtue of a warrant of deportation duly and regularly issued by the Secretary of Labor of the United States after a hearing duly and regularly held before an Immigrant Inspector of the United States.

II.

That a true copy of said warrant of deportation and the original record of the entire proceedings pertaining thereto are annexed hereto and made a part hereof as respondent's Exhibits "A" and "B".

WHEREFORE, Respondent prays that the petition for Writ of Habeas Corpus herein be denied.

ARTHUR J. PHELAN

Inspector in Charge, Legal Division as aforesaid, hereunto authorized for and on behalf of Respondent Edward W. Cahill, District Commissioner of Immigration and Naturalization.

[Endorsed]: Filed Dec 7, 1935 Walter B. Maling, Clerk. [7]

[Title of Court]

AT A STATED TERM of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Saturday, the 7th day of December, in the year of our Lord one thousand nine hundred and thirty-five.

PRESENT: The Honorable HAROLD LOUDERBACK, UNITED STATES DISTRICT JUDGE.

[Title of Cause.]

This matter came on regularly this day for hearing on Return to Petition for Writ of Habeas Corpus. A. J. Zirpoli, Esq., Assistant U. S. Attorney, was present for Respondent. Geo. R. Anderson, Esq., appeared as Attorney for petitioner. Mr. Zirpoli

presented Immigration Records and Exhibits. Case was argued by Mr. Anderson and ordered submitted on Briefs to be filed in 15, 5 and 5 days. [8]

District Court of the United States
Northern District of California
Southern Division

AT A STATED TERM of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 3rd day of February, in the year of our Lord one thousand nine hundred and thirty-six.

PRESENT: the Honorable HAROLD LOUDERBACK, UNITED STATES DISTRICT JUDGE.

NO. 22142-L

In the Matter of
CAMPBELL W. S. BRANCH,
On Habeas Corpus.

Petition for Writ of Habeas Corpus having been submitted and being now fully considered, it is ordered that the same be and is hereby denied, and the petitioner is hereby remanded into the custody of the U. S. Commissioner of Immigration. [9]

[Title of Court and Cause.]

NOTICE OF APPEAL.

To the Clerk of the above entitled Court; to EDWARD CAHILL, Commissioner of Immigration for the Northern District of California, and to H. H. McPike, United States Attorney, his attorney:

YOU, and Each of you, WILL PLEASE TAKE NOTICE that Campbell William Skeoch Branch, the alien in the above entitled cause, and your petitioner on behalf of said alien, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the order and judgment rendered, made and entered herein on February 4th, 1936, denying the petition for a writ of Habeas Corpus herein.

Dated: February 13th, 1936.

GEORGE R. ANDERSEN

Petitioner And Attorney for
said Alien.

Received a copy hereof this 13th day of February, 1936.

H. H. McPIKE

For U.S. Attorney.

[Endorsed]: Filed Feb. 17, 1936. Walter B. Maling, Clerk. [10]

[Title of Court and Cause.]

PETITION FOR APPEAL.

Comes now the petitioner in the above entitled matter, George R. Andersen, Esq., on behalf of said alien and respectfully shows:

That on the 4th day of February, 1936, the above entitled court made and entered its order denying the petition for a writ of habeas corpus as prayed for in the petition on file herein, in which said order in the above entitled cause certain errors were made to the prejudice of the appellant herein, all of which will more fully appear from the assignment of errors filed herewith.

WHEREFORE, the appellant prays that an appeal may be granted in his behalf to the Circuit Court of Appeals of the United States for the Ninth Circuit thereof, for the correction of the errors complained of; and further, that a transcript of the record, proceedings and papers in the above entitled cause, as shown by the praecipe, duly authenticated, may be sent and transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit thereof; and further, that the said alien may be held within the jurisdiction of this court during the pendency of the appeal herein, so that he may be produced in execution of whatever judgment may be finally entered herein.

Dated: February 13th, 1936.

GEORGE R. ANDERSEN,

Petitioner, and Attorney for
said Alien

[Endorsed]: Filed Feb. 17, 1936 Walter B. Maling, Clerk. [11]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Comes now the petitioner and appellant herein and sets forth the errors he claims the above entitled court committed in denying his petition for a writ of habeas corpus, as follows:

I.

That the court erred in not granting the writ of Habeas Corpus and discharging the said alien from the custody and control of Edward Cahill, Commissioner of Immigration at the port of San Francisco.

II.

That the court erred in not holding that it had jurisdiction to issue the writ of habeas corpus as prayed for in the petition on file herein.

III.

That the court erred in not holding that the allegations set forth in the petition for a writ of habeas corpus were sufficient in law to justify the granting and issuing of the writ of habeas corpus.

IV.

That the court erred in holding that the evidence adduced before the immigration authorities was sufficient in kind and character to warrant a finding by the Court that the said alien was not entitled to a writ of habeas corpus and that said [12] alien was entitled to a complete discharge from the cus-

tody and control of said Edward Cahill, Commissioner of Immigration at the Port of San Francisco.

V.

That the court erred in holding that the record contained sufficient evidence to show the charges placed against the alien were proven.

VI.

That the court erred in not holding that the proceedings against said alien were unfair and prejudicial to the alien and that the warrant of deportation was arbitrarily issued, by virtue of the fact that the record of the hearing does not contain sufficient or any evidence to justify the issuance of said warrant of deportation.

WHEREFORE, appellant prays that the said order and judgment of the United States District Court for the Northern District of California, made and entered herein on February 4th, 1936, denying the petition for a writ of habeas corpus, be reversed and that he be restored to his liberty and go hence without delay.

DATED: February 13th, 1936.

GEORGE R. ANDERSEN

Petitioner and Attorney for
said Alien.

[Endorsed]: Filed Feb. 17, 1936. Walter B. Maling, Clerk. [13]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

It appearing to the above entitled court that George R. Anderson, for and on behalf of said alien, has this day filed and presented to the above entitled court his petition praying for an order of this court allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and order of this Court denying his petition for a writ of habeas corpus herein and dismissing his petition for said writ, and good cause appearing therefor:

IT IS HEREBY ORDERED that an appeal be and the same is hereby allowed as prayed for herein; and

IT IS FURTHER ORDERED that the Clerk of the above entitled Court makes and prepare a transcript of all the papers, proceedings and records in the above entitled matter and transmit the same to the United States Circuit Court of Appeals for the Ninth Circuit within the time allowed by law; and

IT IS FURTHER ORDERED that the execution of the warrant of deportation of the said alien be and the same is hereby stayed pending this appeal and that the said Alien be not removed from the jurisdiction of this Court pending this appeal.

Dated: February 13th, 1936.

HAROLD LOUDERBACK

United States District Judge

[Endorsed]: Filed Feb. 17, 1936 Walter B. Maling, Clerk. [14]

[Title of Court and Cause.]

ORDER TRANSMITTING ORIGINAL
EXHIBITS.

GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED that the Immigration Records filed as exhibits herein by the respondent may be transmitted by the Clerk of the above entitled court to and filed with the Clerk of the United States Circuit Court of Appeal for the Ninth Circuit to be taken as a part of the record on appeal in the above entitled cause with the same force and effect as if embodied in the transcript of record and so certified by the Clerk of this Court.

Dated: February 13th, 1936.

HAROLD LOUDERBACK

United States District Judge.

[Endorsed]: Filed Feb. 17, 1936 Walter B. Maling, Clerk. [15]

[Title of Court and Cause.]

ORDER ADMITTING ALIEN TO BAIL
PENDING APPEAL.

In the above entitled matter an appeal having been allowed and taken to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and order of this Court denying the petition for a writ of habeas corpus for and on behalf of said alien:

IT IS HEREBY ORDERED that the said alien may be admitted to bail in the penal sum of ONE THOUSAND DOLLARS, upon good and sufficient surety or sureties pending the final determination of said appeal to the said United States Circuit Court of Appeals for the Ninth Circuit.

DATED: February 15th, 1936.

HAROLD LOUDERBACK

United States District Judge

Amount of Bail Approved:

H. H. McPIKE,
U. S. Attorney

By: ROBT. McWILLIAMS,
Asst. U. S. Atty.

[Endorsed]: Filed Feb. 17, 1936. Walter B. Maling, Clerk. [16]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT ON APPEAL.

To the Clerk of said Court:

SIR: Please issue copies of the following papers to be used in preparing transcript on appeal:

1. Petition for Writ of Habeas Corpus;
2. Order to Show Cause;
3. Appearance of Respondent, and Notice of filing excerpts of testimony, etc.;
4. Minute order respecting introduction of original immigration records, as exhibits;
5. Order denying petition for writ of habeas corpus.

6. Notice of Appeal.
 7. Petition for Appeal.
 8. Assignment of errors.
 9. Order Allowing appeal.
 10. Order transmitting original immigration records as exhibits.
 11. Praecipe for record on appeal.
 12. Order admitting alien to bail pending appeal.
- Dated: February 23, 1936.

GEORGE R. ANDERSEN

Petitioner and Attorney for
said Alien

[Endorsed]: Filed Feb. 17, 1936 Walter B. Maling, Clerk. [17]

[Title of Court.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 17 pages, numbered from 1 to 17, inclusive, contain a full, true, and correct transcript of the records and proceedings in the matter of William Campbell Skeoch Branch, on Habeas Corpus No. 22142-L, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Two & 90/100 (\$2.90) Dollars and

that the said amount has been paid to me by the Attorney for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 27th day of February A. D. 1936

[Seal]

WALTER B. MALING,
Clerk.

By A. W. CATHCART,
Deputy Clerk. [18]

CITATION ON APPEAL.

United States of America, ss:

The President of the United States of America to EDWARD CAHILL, Commissioner of Immigration for the Northern District of California at the Port of San Francisco, California, greeting:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal of record in the Clerk's Office of the United States District Court for the Northern District of California wherein George R. Andersen, for and on behalf of WILLIAM CAMPBELL SKEOCH BRANCH, an Alien, is appellant, and you are appellee, to show cause, if any there be, why the decree or judgment rendered against the said appellant,

as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable HAROLD LOUDERBACK United States District Judge for the Northern District of California this 25th day of February, 1936.

HAROLD LOUDERBACK

United States District Judge.

[Endorsed]: Filed Feb. 28, 1936. Walter D. Mal-
ing, Clerk.

[Endorsed]: No. 8160. United States Circuit Court of Appeals for the Ninth Circuit. Campbell William Skeoch Branch, an alien, Appellant, vs. Edward Cahill, Commissioner of Immigration for the Northern District of California at the Port of San Francisco, California, Appellee. Transcript of Record Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed March 24, 1936.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

